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10 **BEFORE THE**
11 **BOARD OF REGISTERED NURSING**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

14 **JULIE ANN MILLER, R.N.**
877 Buttercup Road
15 Carlsbad, CA 92009

16 Registered Nurse License No. 301978

17 Respondent.

Case No. 2007-296

**DEFAULT DECISION
AND ORDER**

[Gov. Code, §11520]

18
19 **FINDINGS OF FACT**

20 1. On or about June 15, 2007, Complainant Ruth Ann Terry, M.P.H, R.N, in
21 her official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs, filed Accusation No. 2007-296 against Julie Ann Miller, R.N. (Respondent)
23 before the Board of Registered Nursing.

24 2. On or about March 31, 1979, the Board of Registered Nursing (Board)
25 issued Registered Nurse License No. 301978 to Respondent. The Registered Nurse License
26 expired on September 30, 2006, and has not been renewed.

27 3. On or about June 25, 2007, Mona Sebastian, an employee of the
28 Department of Justice, served by First Class and Certified Mail a copy of the Accusation No.

1 2007-296, Statement to Respondent, Notice of Defense, Request for Discovery, Government
2 Code sections 11507.5, 11507.6, and 11507.7, and the Disciplinary Guidelines to Respondent's
3 address of record with the Board, which was and is 877 Buttercup Road, Carlsbad, CA 92009. A
4 copy of the Accusation, the related documents, and Declaration of Service are attached as exhibit
5 A, and are incorporated herein by reference.

6 4. Service of the Accusation was effective as a matter of law under the
7 provisions of Government Code section 11505, subdivision (c).

8 5. On or about July 16, 2007, the documents which were served by certified
9 mail were returned by the U.S. Postal Service marked "Unclaimed." A copy of the envelope
10 returned by the post office is attached as exhibit B, and is incorporated herein by reference.

11 6. The copy that was served by First Class Mail was never returned to the
12 Office.

13 7. Business and Professions Code section 118 states, in pertinent part:

14 "(b) The suspension, expiration, or forfeiture by operation of law of a license
15 issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the
16 board or by order of a court of law, or its surrender without the written consent of the board, shall
17 not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the
18 board of its authority to institute or continue a disciplinary proceeding against the licensee upon
19 any ground provided by law or to enter an order suspending or revoking the license or otherwise
20 taking disciplinary action against the license on any such ground."

21 8. Government Code section 11506 states, in pertinent part:

22 "(c) The respondent shall be entitled to a hearing on the merits if the respondent
23 files a notice of defense, and the notice shall be deemed a specific denial of all parts of the
24 accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
25 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

26 9. Respondent failed to file a Notice of Defense within 15 days after service
27 upon her of the Accusation, and therefore waived her right to a hearing on the merits of
28 Accusation No. 2007-296.

10. California Government Code section 11520 states, in pertinent part:

"(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent."

11. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on Respondent's express admissions by way of default and the evidence before it, contained in exhibits A, B and C, finds that the allegations in Accusation No. 2007-296 are true.

12. The total costs for investigation and enforcement are \$4,384.5 as of August 14, 2007. A certification of costs is attached hereto as Exhibit C.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Julie Ann Miller, R.N. has subjected her Registered Nurse License No. 301978 to discipline.

2. A copy of the Accusation and the related documents and Declaration of Service are attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Board of Registered Nursing is authorized to revoke Respondent's Registered Nurse License based upon the following violations alleged in the Accusation:

a. Respondent is subject to disciplinary action under Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined in Code section 2762, subdivisions (a) and (b) for obtaining and self-administering a dangerous drug.

b. Respondent is subject to disciplinary action under sections 2761(a) and 2762(a) for obtaining a controlled substance (Norco) by forgery of a prescription on or about June 24, 2005.

c. Respondent is subject to disciplinary action for unprofessional conduct pursuant to section 2762(e) for falsifying a prescription for a controlled substance (Norco) on or about June 24, 2005.

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1 d. Respondent is subject to disciplinary action under sections 2761(a)
2 and 2762(a) for obtaining a controlled substance (Ambien) by forgery of a prescription on or
3 about August 21, 2005.

4 e. Respondent is subject to disciplinary action for unprofessional
5 conduct pursuant to section 2762(e) for falsifying a prescription for a controlled substance
6 (Ambien) on or about August 21, 2005.

7 **ORDER**

8 IT IS SO ORDERED that Registered Nurse License No. 301978, heretofore
9 issued to Respondent Julie Ann Miller, R.N., is revoked.

10 Pursuant to Government Code section 11520, subdivision (c), Respondent may
11 serve a written motion requesting that the Decision be vacated and stating the grounds relied on
12 within seven (7) days after service of the Decision on Respondent. The agency in its discretion
13 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the
14 statute.

15 This Decision shall become effective on November 12, 2007.

16 It is so ORDERED October 12, 2007

17 *LaThene M Tate*

18 FOR THE BOARD OF REGISTERED NURSING
19 DEPARTMENT OF CONSUMER AFFAIRS

20
21
22 80155520.wpd
23 DOJ docket number:SD2007800029

24 **Attachments:**

25 Exhibit A: Accusation No.2007-296, Related Documents, and Declaration of Service
26 Exhibit B: Copy of Envelope Returned by Post Office
27 Exhibit C: Certification of Costs: Declaration of Diane de Kervor
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BOARD OF REGISTERED NURSING
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

13 **JULIE ANN MILLER, R.N.**
14 877 Buttercup Road
15 Carlsbad, CA 92009

16 Registered Nurse License No. 301978

17 Respondent.

Case No. 2007-294

OAH No.

A C C U S A T I O N

18 Complainant alleges:

19 **PARTIES**

20 1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation
21 solely in her official capacity as the Executive Officer of the Board of Registered Nursing
22 ("Board"), Department of Consumer Affairs.

23 2. On or about March 31, 2009, the Board issued Registered Nurse License
24 Number 301978 to Julie Ann Miller, R.N. (Respondent). The Registered Nurse License will
25 expire on September 30, 2008, unless renewed before that time.

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JURISDICTION AND STATUTORY PROVISIONS

3. Business and Professions Code ("Code") section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

4. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following..."

5. Section 2762 of the Code states:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

"(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

"(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

". . . .

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1 "(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible
2 entries in any hospital, patient, or other record pertaining to the substances described in
3 subdivision (a) of this section."

4 6. Code section 2764 provides, in pertinent part, that the expiration of a
5 license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding
6 against the licensee or to render a decision imposing discipline on the license. Under Code
7 section 2811, subdivision (b), the Board may renew an expired license at any time within eight
8 years after the expiration.

9 7. Code section 2770.11 states:

10 “(a) Each registered nurse who requests participation in a diversion program shall
11 agree to cooperate with the rehabilitation program designed by a committee. Any failure to
12 comply with the provisions of a rehabilitation program may result in termination of the registered
13 nurse's participation in a program. The name and license number of a registered nurse who is
14 terminated for any reason, other than successful completion, shall be reported to the board's
15 enforcement program.

16 “(b) If a committee determines that a registered nurse, who is denied admission
17 into the program or terminated from the program, presents a threat to the public or his or her own
18 health and safety, the committee shall report the name and license number, along with a copy of
19 all diversion records for that registered nurse, to the board's enforcement program. The board
20 may use any of the records it receives under this subdivision in any disciplinary proceeding.

21 8. Code section 118, subdivision (b), provides that the suspension,
22 expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to
23 proceed with a disciplinary action during the period within which the license may be renewed,
24 restored, reissued or reinstated.

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1 **COST RECOVERY**

2 9. Code section 125.3 provides, in pertinent part, that the Board may request
3 the administrative law judge to direct a licentiate found to have committed a violation or
4 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
5 and enforcement of the case.

6 **DRUGS**

7 10. **Ambien** (Zolpidem Tartrate) is a dangerous drug pursuant to section 4022
8 and a schedule IV controlled substance pursuant to Health and Safety Code section 11507(d)(32).

9 11. **Dilaudid** (Hydromorphone) is a dangerous drug pursuant to section 4022
10 and a schedule II controlled substance pursuant to Health and Safety Code section
11 11055(b)(1)(K).

12 12. **Versed** (Midazolam HCL) is a dangerous drug pursuant to section 4022
13 and a schedule IV controlled substance pursuant to Health and Safety Code section 11507(d)(21).

14 13. **Norco** (Hydrocodone/Acetaminophen) is a dangerous drug pursuant to
15 section 4022 and a schedule II controlled substance pursuant to Health and Safety Code section
16 11055(b)(1)(J).

17 14. **Roxicet** (Oxycodone/ Acetaminophen) is a dangerous drug pursuant to
18 section 4022 and a schedule II controlled substance pursuant to Health and Safety Code section
19 11055(b)(1)(N).

20 15. **Xanax** (Alprazolam) is a dangerous drug pursuant to section 4022 and a
21 schedule IV controlled substance pursuant to Health and Safety Code section 11507(d)(1).

22 **FACTS SUPPORTING CAUSES FOR DISCIPLINE**

23 16. On or about September 1, 2005, a female using the name Tess from La
24 Jolla Orthopedic called in a refill prescription for **Xanax**, under the name Julie Miller, to the
25 Ralphs Pharmacy located at 8657 La Jolla Drive, San Diego, CA. The pharmacy employees were
26 suspicious of the call, so they called the prescribing physician's office and confirmed that the

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1 prescription was fraudulent. Then, they called the authorities. Subsequently, respondent arrived
2 at the pharmacy and attempted to pick up the fraudulent prescription. The pharmacists stalled the
3 Respondent until the authorities arrived and arrested Respondent.

4 17. The arresting officer noted that Respondent exhibited symptoms of being
5 under the influence of an opiate-based drug. Her eyelids were droopy and she appeared to be
6 falling asleep, her skin was cold and clammy, her pupils were constricted, she spoke in a very
7 low tone of voice, she shuffled her feet despite being supported by the officer, and she kept
8 passing gas. Respondent was arrested for a violation of Health and Safety Code section 11173(a)
9 (Attempting to Obtain a Controlled Substance by Fraud), Penal Code section 459 (Second
10 Degree Burglary), and Health and Safety Code section 11550(a) (Under the Influence of a
11 Controlled Substance).

12 18. A subsequent search of Respondent's purse and car revealed many blank
13 and pre-written prescriptions, medications that were controlled (**Midazolam HCL,**
14 **Hydromorphone, Ambien, Roxicet, Xanax, and Norco**) and not controlled, empty
15 prescriptions bottles, syringes, needles, and a rubber arm tourniquet.

16 19. Several of the prescriptions were in the names of doctors who were
17 employees of the Orthopedic Surgery Center, where Respondent had been a registered nurse in
18 the recovery room. Respondent exploited her position as a nurse at the Center by fraudulently
19 obtaining prescriptions using the names of physicians that worked at the Center, as indicated by
20 the unfilled prescriptions found in her purse and car. The forged prescription that led to
21 Respondent's September 1, 2005 arrest was forged with the name Dr. J.S. as the prescribing
22 physician. Dr. J.S. worked at the Center. Julie Miller is not a patient of Dr. J.S. and he has never
23 prescribed her any medications.

24 20. Tracing the prescriptions and medications found in respondent's
25 possession, and interviewing the physicians whose prescription pads were used in the fraudulent
26 transactions, revealed additional instances of Respondent obtaining controlled substances by
27 forging prescriptions using prescription pads by doctors who worked at the Center:

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1 A. On or about June 24, 2005, Respondent fraudulently obtained 30 tablets of
2 generic Norco from the Longs Drugs at 129 North El Camino Real,
3 Encinitas, CA, with Dr. J.S. as the prescribing physician. Julie Miller is
4 not a patient of Dr. J.S. and he has never prescribed her any medications.
5 The empty prescription bottle was found in Respondent's vehicle on or
6 about September 1, 2005.

7 B. On or about August 21, 2005, Respondent fraudulently obtained 30 tablets
8 of Ambien from the Vons Pharmacy on 931 Lomas Santa Fe, Solana
9 Beach, CA with Dr. M.W. as the prescribing physician. Julie Miller is not
10 a patient of Dr. M.W. and he has never prescribed her any medications.
11 The prescription bottle was found in Respondent's vehicle on or about
12 September 1, 2005, with 17 tablets left inside of it.

13 21. On or about November 30, 2005, in the Superior Court, County of San
14 Diego, in the matter entitled *People vs. Julie A. Miller* (Super. Ct. San Diego County 2005, Case
15 No. CD193434), Respondent pled guilty to a violation of Health and Safety Code section 11368
16 (obtaining a narcotic by forgery of a prescription), a felony. Respondent admitted that she
17 obtained a narcotic drug (Xanax) by a forged prescription.

18 22. Pursuant to the plea agreement, on November 30, 2005, Respondent's
19 sentence was deferred pursuant to Penal Code section 1000 et seq. Respondent has not yet
20 shown proof of completion of the program requirements, and is next scheduled to appear on May
21 21, 2007 before the Superior Court of California, County of San Diego.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct - Obtaining and Self-Administering a Dangerous Drug)**

3 23. Respondent is subject to disciplinary action under Code section 2761,
4 subdivision (a), on the grounds of unprofessional conduct, as defined in Code section 2762,
5 subdivisions (a) and (b), in that on or about September 1, 2005, Respondent obtained and self
6 administered a dangerous drug and was under the influence of a controlled substance and arrested
7 for a violation of Health and Safety Code section 11550(a) (Under the Influence of a Controlled
8 Substance). The facts supporting this cause for discipline are described in paragraphs 16-22
9 above, and are incorporated by reference herein.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Unprofessional Conduct - Obtaining a Controlled Substance by Forgery
12 of a Prescription on June 24, 2005)**

13 24. Respondent is subject to disciplinary action under sections 2761(a) and
14 2762(a) for obtaining a controlled substance (Norco) by forgery of a prescription on or about
15 June 24, 2005. The facts supporting this cause for discipline are described in paragraphs 16-22
16 above, and are incorporated by reference herein.

17 **THIRD CAUSE FOR DISCIPLINE**

18 **(Unprofessional Conduct - Falsifying a Prescription for a
19 Controlled Substance on June 24, 2005)**

20 25. Respondent is subject to disciplinary action for unprofessional conduct
21 pursuant to section 2762(e) for falsifying a prescription for a controlled substance (Norco) on or
22 about June 24, 2005. The facts supporting this cause for discipline are described in paragraphs
23 16-22 above, and are incorporated by reference herein.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct - Obtaining a Narcotic by Forgery**
3 **of a Prescription on August 21, 2005)**

4 26. Respondent is subject to disciplinary action under sections 2761(a) and
5 2762(a) for obtaining a controlled substance (**Ambien**) by forgery of a prescription on or about
6 August 21, 2005. The facts supporting this cause for discipline are described in paragraphs 16-22
7 above, and are incorporated by reference herein.

8 **FIFTH CAUSE FOR DISCIPLINE**

9 **(Unprofessional Conduct - Falsifying a Prescription for a**
10 **Controlled Substance on August 21, 2005)**

11 27. Respondent is subject to disciplinary action for unprofessional conduct
12 pursuant to section 2762(e) for falsifying a prescription for a controlled substance (**Ambien**) on
13 or about August 21, 2005. The facts supporting this cause for discipline are described in
14 paragraphs 16-22 above, and are incorporated by reference herein.

15 **DISCIPLINE CONSIDERATIONS**

16 28. Pursuant to Code section 2770.11, the Board may use records reflecting
17 that a nurse was terminated from diversion as a public safety threat in any disciplinary
18 proceeding. To determine the degree of discipline, if any, to be imposed on Respondent,
19 Complainant alleges that on or about or about April 4, 2006, Respondent was enrolled in
20 diversion based upon the conduct described in paragraphs 16 to 22 above. On or about
21 November 30, 2006, the Diversion Evaluation Committee ("DEC") terminated Respondent from
22 the Diversion Program as a public safety threat. Her therapist reported a relapse at the end of
23 October 2006.

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PRAYER


WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Revoking or suspending Registered Nurse License Number 301978, issued to Julie Ann Miller, R.N.

2. Ordering Julie Ann Miller to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: 6/15/07


RUTH ANN TERRY, M.P.H, R.N
Executive Officer
Board of Registered Nursing
State of California
Complainant

SD2007800029
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